IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/03/2004

CORAM

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.No.12022 of 2001 and W.P.No. 12031 of 2001

M.Shanthi .. Petitioner in
both the W.Ps.

-Vs-

1. The Chancellor,
Madurai Kamaraj University,
"Raj Bhavan",
Chennai-32.

2. The Vice-Chancellor,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai-21.

3. The Registrar,
Madurai Kamaraj University,
Palakalai Nagar,
Madurai-21.

4. The Principal,
Madurai Kamaraj University College,
Palakalai Nagar,
Madurai-21.

5. The Syndicate,
Madurai Kamaraj University,
Palakalai Nagar,
Madurai-21.

6. Mrs.A.Rani,

7. A.T.Senthamarai Kannan

8. P.Murugesan

9. P.Kannadas,
.. Respondents in
10.K.Selvakumar both the W.Ps.

For Petitioner :: Mr.G.Masilamani, SC
for M/s.G.M.Mani Associates

For Respondents :: Mr.P.Jothimani for R2 to R5
Mr.M.Venkateswaran for R6
Mr.R.Subramanian for R7 to R10

Prayer: These Writ Petitions are filed under Article 226 of The Constitution of India for the relief of issuance of a writ of Certiorarified Mandamus as stated therein.

:COMMON ORDER

The petitioner and respondents are common in both the Writ Petitions.

2. In Writ Petition No.12022 of 2001, the petitioner seeks for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the selection of the 9th respondent, namely, Mr.P. Kannadas and his appointment to the post of Commerce Lecturer by order dated 31-5-2001 bearing Ref.No.MKUC/Lect/2001 on the file of the fourth respondent, to quash the same and to direct the respondents 2 to 5 to appoint the petitioner as a Commerce Lecturer of the fourth respondent college.

3. In Writ Petition No.12031 of 2001, the petitioner seeks for the issuance of the Writ of Certiorarified Mandamus, to call for the records of the fourth respondent bearing No.MKUC/Lect/2001 dated 31-5-20 01 relating the selection of respondents 6 to 10 for the post of Lecturers in the Department of Commerce, to quash the same and direct the respondents 2 to 5 to place a fresh advertisement in a news paper with wide circulation calling for applications for the said post and conduct fresh interview of the eligible applicants and to appoint the selected candidates to the vacant posts of Lecturers in the various Departments of the fourth respondent College.

4. The petitioner and the respondents 6 to 10 were all admittedly working as Teaching Assistants in the fourth respondent college.

5. There was an advertisement in "Dinamalar" dated 9-5-2001 and 10 -5-2001 at the instance of the fourth respondent, calling for application for appointment of Lecturers in different disciplines including the 'Department of Commerce' for which five posts were earmarked. It is stated that pursuant to the said advertisement, several persons including the petitioner and respondents 6 to 10 submitted their applications. While respondents 6 to 10 got selected to the post of Lecturer in the Department of Commerce, the petitioner was not selected in the said selection process. Aggrieved against the same, the petitioner has come forward with these two Writ Petitions.

6. Mr.G.Masilamani, learned Senior counsel appearing for the petitioner, at the out set, contended that though in Writ Petition No.12031 of 2001, the petitioner seeks to challenge the very process of selection, the learned Senior counsel virtually made his submissions confining the scope of contest as between the petitioner and the ninth respondent alone and thereby not focussing much on other aspects of the challenge made in these Writ Petitions. Therefore, the scope of challenge in these two Writ Petitions has

been narrowed down to the claim of the petitioner vis-a-vis the ninth respondent alone. In such circumstances, though very many contentions were raised in the Affidavit filed on behalf of the petitioner on the methodology of process applied in the selection of the Lecturers in the fourth respondent college in the Department of Commerce, the real contest was limited to the claims of the petitioner and the ninth respondent alone. Even in respect of the other respondents, the learned Senior counsel fairly submitted that since the sixth and seventh respondents though got selected in the 'General Turn', as they secured more marks than the petitioner, the petitioner was not pressing her claim as against the said respondents. As far as the eighth respondent was concerned, he was selected in the 'MBC Category' and therefore, the petitioner did not press her claim as against the said respondent. Similarly, as regards the tenth respondent, since he got selected in the 'SC Category', the petitioner did not also press her claim as against the said respondent. Therefore, the contest was limited with reference to the ninth respondent alone.

7. It is common ground that in the above said advertisement dated 9 -5-2001, the applications were called for in so far as it related to the 'Commerce Department' for the posts of five Lecturers. The said advertisement stipulated that the 'qualification' and the 'pay' would be as per the norms of the 'University Grants Commission' (in short, 'UGC'). As 'UGC' norms are common in respect of all the colleges, the learned Senior counsel referred to the advertisement made by the third respondent University itself for the posts of Lecturer for different disciplines in its advertisement dated 19-1-2001. As far as the 'Department of Commerce' was concerned, the qualification required was 'good academic record with at least 55% of the marks, or, an equivalent grade of B in the 7 point scale with latter grades, O, A, B, C, D, E and F at the Master's Degree level in the relevant subject from an Indian University, or an equivalent degree from a foreign University'. Though the advertisement stated that besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for Lecturers conducted by the UGC, CSIR or similar test accredited by the UGC, it is common ground that the petitioner came under the exempted category in so far as the said prescription was concerned, namely, 'eligibility test (NET/CSIR)' by the 'UGC'. Admittedly, the petitioner holds M.Com. and M.Phil. (First Class), while the ninth respondent is holding M.B.A. with State Level Eligibility Test.

8. In the above stated back ground of the petitioner and the ninth respondent, the question that remains to be considered is as to whether the ninth respondent can be said to have possessed the necessary qualification to apply for the post of Lecturer in the Commerce Department? In fact, this was the main point of attack made by Mr.G. Masilamani, learned Senior counsel appearing for the petitioner as against the ninth respondent.

9. While making his submissions, the learned Senior counsel, pointed out that when in the advertisement dated 9-5-2001, the fourth respondent college advertised for the posts of Lecturer in the Commerce Department prescribing qualifications of possessing a Master's Degree level in the relevant subject and admittedly, the ninth respondent was holding a Master Degree in Business Administration though having cleared 'State Level Eligibility Test', he cannot be held to be possessing the eligible

qualification even to apply for the post of Lecturer in the Commerce Department. According to the learned Senior counsel, the contention that in the fourth respondent college, there are graduate level courses in the Business Administration for which, the services of the ninth respondent were being utilised as a Teaching Assistant and therefore, his selection cannot be held to be invalid can never be accepted.

10. The learned Senior counsel also contended that when the appointment to the post of Lecturer in respect of a college whose administration and management is governed by the Syndicate of the Madurai Kamaraj University formed under the provisions of the Madurai Kamaraj University Act, 1965 it would only mean that the selection made for the fourth respondent college for the post of Lecturer would certainly be an act which if not done in accordance with the prescribed norms of the `UGC', as well as, the University Act, render such selection liable to be scrutinized under Article 226 of the Constitution of India.

11. The submissions made on behalf of the petitioner were resisted by Mr.Jothimani, learned counsel appearing for the respondents 2 to 5 , and Mr.R.Subramanian, learned counsel appearing for the respondents 7 to 10. Mr.Jothimani, learned counsel for the respondents 2 to 5, contended that the writ itself was not maintainable as against the selection made by the fourth respondent college as the same was not amenable to writ jurisdiction. It was further contended that the selection process and the selection made by the appropriate committee can never be questioned. According to the learned counsel, inasmuch as the Selection Committee consisted of experts in the required field and when a selection came to be made befitting the posts to be held by the concerned candidates, the same cannot be called in question merely because the petitioner did not get selected in the said selection. It was further contended that the Graduate course of Business Administration was controlled by the Commerce Department of the fourth respondent college and therefore, when the Selection Committee found the ninth respondent more suitable for the post of Lecturer in order to handle such course of Business Administration, for which he was possessing necessary qualifications, the said selection cannot be found fault with.

12. The argument of Mr.R.Subramanian, learned counsel appearing for the ninth respondent was also on the similar lines. The learned counsel also relied upon the judgment reported in 2002(2) CTC 474 (PRADEEP KUMAR BISWAS AND OTHERS versus INDIAN INSTITUTE OF CHEMICAL BIOLOGY AND OTHERS).

13. Having heard the learned counsel for the respective parties and on a perusal of the records relating to the selection made for the post of Lecturer in the Commerce Department in question, I find that the petitioner has been awarded total of 31 marks as against 22 marks awarded for the ninth respondent. The petitioner had secured 21 marks for teaching experience apart from 8 marks towards performance in the interview. She has also been awarded one mark each for PG qualification and Research work in M.Phil. respectively. As far as the ninth respondent was concerned, he had secured 9 marks for teaching experience and 12 marks towards performance in the interview apart from one mark for PG qualification. The Selection Committee has noted in their records that the ninth respondent was selected as Lecturer to handle BBA classes on the basis of the request of the Principal of the fourth respondent college as he was qualified.

14. It transpires that the selection of the ninth respondent was purely on the ground that he was handling BBA classes and he was having necessary qualification to handle such classes. Further fact remains that his selection came to be made purely at the request of the Principal of the fourth respondent college. Therefore, in spite of the better performance of the petitioner in the selection as revealed from the marks secured by her which were far above the ninth respondent, she was not selected for the reasons which weighed with the Selection Committee in so far as the ninth respondent was concerned. Therefore, the question is whether such selection of the ninth respondent for some special reasons, namely, that he was having the qualifications to handle Business Administration course and was in fact handling Business Administration course, would outweigh the claim of the petitioner in the selection held by the third and fourth respondents herein.

15. As narrated in the initial part of this order, the advertisement made by the fourth respondent was only for the appointment of five posts of Lecturer in the Commerce Department. It may be that the Commerce Department was handling Business Administration classes also. If really the fourth respondent college wanted to allot one post in the Commerce Department exclusively for the candidate who possesses the required qualification in the Business Administration course, both PG as well as the other qualifications, nothing could have prevented the fourth respondent college to have specifically earmarked that post even in the Commerce Department, in which event, the scope for selection would have been entirely in different spheres. If such a specific prescription had been made, it would have enabled persons with even better qualifications than that of the ninth respondent to have applied and it would have enabled the Selection Committee also to have a wider scope of consideration. Even a perusal of the Selection Committee's proceedings do not disclose that any candidate other than the ninth respondent who was in possession of such qualification in that subject came up for consideration to compete with the ninth respondent. When the advertisement merely stated the post for lecturer in Commerce Department, it is but proper that the zone of consideration is confined to the requirement that was stipulated in the advertisement. In the other advertisement dated 19-1-2001 made by the third respondent university for different posts, I find that different prescriptions for different disciplines have been specifically prescribed in the very notification itself.

16. Therefore, when no such details are found in the advertisement dated 9-5-2001 through which applications were called for by the fourth respondent college, it will have to be held that certain aspects which were within the special knowledge of the fourth respondent cannot be imported with the Selection Committee at the time of selection and thereby to persuade the Selection Committee to choose the ninth respondent from among the candidates, merely because in the opinion of the Principal of the fourth respondent college, the said respondent was better suited for the post. I am afraid that such a special concession shown towards the ninth respondent if allowed to remain, that would only encourage the concerned authorities to deviate from the prescribed procedure and show some special consideration to a particular candidate in a selection which can never be permitted in the interest of any institution which imparts education, where merit alone should be the criteria in the matter of selection.

17. In the light of the above said controversy that remain in

the matter of selection of the ninth respondent, it will have to be held that such a controversy cannot be held to be exclusively a private affair of the fourth respondent which cannot be called in question in a Writ Petition.
18. In this contest, when the counter affidavit filed by the third respondent university is perused, paragraph 4 of the said counter affidavit can be usefully referred to which reads as under:

"4. I submit that the allegations contained in paragraph 3 to 10 of the affidavit are all denied as incorrect and misleading. It is true that the Madurai Kamaraj University Act provides for establishment and running of Madurai Kamaraj University College. It is submitted that the Syndicate of the Madurai Kamaraj University has formed a Madurai Kamaraj University College Governing Council in order to administrate the college. The second respondent herein is the Chairman and the fourth respondent is the Member Secretary of the Governing Council. I submit that the day to day administration of the college is looked after by the fourth respondent and the policy decisions and appointments were made by the Governing Council. However, the Syndicate of the Madurai Kamaraj University will approve and ratify the actions taken by the Governing Council. It is significant to note that the Madurai Kamaraj University college is not receiving any salary grant either from Madurai Kamaraj University or from the State Government or from the University Grants Commission. It is submitted that the Madurai Kamaraj University College is having the fee structure to the students as those of self financing college. The salary to the teaching and non-teaching staff are paid from the tuition fees received from the students. Hence in the above circumstances, the present Writ Petition is not maintainable."
(Underlining is mine)

19. Excepting that it was a self-finance institution, in very many respects, the control vests with the third respondent, it is not as if the fourth respondent college came to be started by any private individual and managed as such. Section 2 (r) of the Madurai Kamaraj University Act, 1965 defines, "University college" to be 'a college or a college combined with a research institute maintained by the University (whether instituted by it or not) and providing courses of study leading up to the post-graduate and professional degrees.". The definition of 'College' under Section 2(c) describes it to mean "any college or any institution maintained or approved by or affiliated to the University and providing courses of study for admission to the examinations of the University and includes constituent colleges. The various provisions of the Act have been decidedly made to have absolute control over the academic aspects as well as other manner of management and administration of the fourth respondent college. Even as per the counter affidavit filed on behalf of the respondents 6 to 10, though it is stated that the fourth respondent college is not receiving any salary grant from the University or State Government or UGC, the appointments though made by the Governing Council, they are approved and ratified by the Syndicate of the third respondent University.
20. Therefore, the above factors coupled with the fact that selection for various posts of Lecturers in the fourth respondent college is done by the Selection Committee consisting of Vice Chancellor and other

Syndicate members of the third respondent University along with the Principal only go to show that the third respondent University had all pervasive control over the fourth respondent college.

21. In this context, it will be relevant to refer to the judgment of the Hon'ble Supreme Court reported in 1989(2) LLJ 324 "(ANDI MUKTA SATGURU SHREE MUKTAJEE VANDAS SWAMI SUVARNA JAYANTI MAHOTSAV SMARAK TRUST AND OTHERS versus V.R.RUDANI AND OTHERS)" wherein the Hon'ble Supreme Court dealt with a college run by a Trust which was affiliated to Gujarath University formed under the Gujarat University Act, 1949, has held as under in para 20 and 22, which read as under:

"20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

"21. In Praga Tools Corporation V. C.A.Imanual (1969) 3 SCR 773 at 778 (1969-I-LLJ-xxiii at xxiv-Short Notes), this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statues even though they are not public officials or statutory body. It was observed:

"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (Cf.Halsbury's Laws of England, 3rd ed., Vol.II, p.52 and onwards)"

(Underling is mine)

22. If we apply the above said ratio to the case on hand, I am convinced that it can be safely concluded that the process of selection to the post of Lecturer in the fourth respondent institution would certainly fall within the four corners of the expression "public duty" and in such a situation when some glaring deficiency was pointed out in the matter of selection for the post of a Lecturer, this Court cannot remain a silent spectator and hold that it is purely an affair between the fourth respondent college and the persons who got either selected or who competed in the said selection. I am therefore obliged to interfere with the selection of the ninth respondent for the various reasons pointed out in the foregoing paragraphs of this order.

23. Though the petitioner, while seeking to set aside the

selection of the ninth respondent, also prays for a direction for her appointment. I am afraid such a positive direction can be given in these Writ Petitions. Therefore, while setting aside the selection of the ninth respondent, third and fourth respondents can only be directed to proceed afresh with the selection for appointment of that single post of Lecturer in the Department of Commerce by following the prescribed procedure.
In the result, the Writ Petitions are disposed of setting aside the selection in so far as ninth respondent alone is concerned. However, it is open to the third and fourth respondents to resort to fresh selection in respect of appointment of Lecturer in the Department of Commerce by following the appropriate prescribed procedure. No costs.

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To

1. The Chancellor,
Madurai Kamaraj University,
"Raj Bhavan",
Chennai-32.

2. The Vice-Chancellor,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai-21.

3. The Registrar,
Madurai Kamaraj University,
Palakalai Nagar,
Madurai-21.

4. The Principal,
Madurai Kamaraj University College,
Palakalai Nagar,
Madurai-21.

5. The Syndicate,
Madurai Kamaraj University,
Palakalai Nagar,
Madurai-21.